

**BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Filed Against:

CASE NO.: PT-2004-1693

**TRACY DAWN SIMMONS**

155 Brewer Street, Apt. 32  
Templeton, CA 93465

Psychiatric Technician License No. PT 31428

**DEFAULT DECISION  
AND ORDER**

Respondent

Tracy Dawn Simmons ("Respondent") was served Accusation No. PT-2004-1693; Statement to Respondent; Notice of Defense form; copies of Government Code sections 11507.5, 11507.6 and 11507.7; and Request for Discovery by both first class and certified mail on September 5, 2008 at her address of record as provided in sections 11503 and 11505 of the Government Code of the State of California.

Respondent failed to file a Notice of Defense within the time specified in Government Code section 11506.

The Bureau of Vocational Nursing and Psychiatric Technicians ("Bureau") has determined that Respondent has waived her rights to a hearing to contest the merits of the Accusation and that the Bureau will take action on the Accusation without a hearing, pursuant to Government Code section 11520.

The Bureau makes the following findings of fact:

**FINDINGS OF FACT**

1. Teresa Bello-Jones, J.D., M.S.N., R.N., made and filed the Accusation solely in her capacity as the Bureau's Executive Officer.

2. On September 11, 2002, the Bureau issued Psychiatric Technician License No. PT 31428 to Respondent. Said license expired on March 31, 2008 and has not been renewed.

3. Pursuant to Business and Professions Code sections 101.1(b) and 150, the Department of Consumer Affairs has succeeded to and is vested with all duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of the Bureau and its

1 executive officer; that the department is under the control of the Director of Consumer Affairs.

2 4. Pursuant to Business and Professions Code section 4520, the Bureau may  
3 discipline any licensed psychiatric technician for any reason provided in Article 3 of the Psychiatric  
4 Technician Law.

5 5. Pursuant to Business and Professions Code section 118(b), the expiration of a  
6 license shall not deprive the Bureau of jurisdiction to proceed with a disciplinary action during the  
7 period within which the license may be renewed, restored, reissued, or reinstated. Under Business  
8 and Professions Code section 4545, the Bureau may renew an expired license at any time within four  
9 (4) years after the expiration.

10 6. Respondent has subjected her license to discipline under Business and  
11 Professions Code sections 490, 4521(a) and 4521(f), in conjunction with California Code of  
12 Regulations, title 16, section 2578, in that Respondent was convicted of crimes substantially related  
13 to the qualifications, functions or duties of a licensed psychiatric technician, as described in  
14 Accusation No. PT-2004-1693, a copy of which is attached as Exhibit "1" and incorporated by  
15 reference.

16 7. Respondent has subjected her license to discipline under Business and  
17 Professions Code section 4521(a)(4), on the grounds of unprofessional conduct, in that Respondent  
18 was convicted of possession of a controlled substance, as described in Accusation No. PT-2004-  
19 1693.

20 8. Respondent has subjected her license to discipline under Business and  
21 Professions Code sections 136(a) and 4521(a), in conjunction with California Code of Regulations,  
22 title 16, section 2564, in that Respondent committed acts which constitute unprofessional conduct,  
23 when she failed to notify the Bureau of any change in her mailing address within 30 days after the  
24 change, as described in Accusation No. PT-2004-1693.

### 25 **DETERMINATION OF ISSUES**

26 Based on the foregoing Findings of Fact, Respondent has subjected her license to  
27 discipline under Business and Professions Code sections 136(a), 490, 4521(a), 4521(a)(4), 4521(f),  
28 and California Code of Regulations, title 16, sections 2564 and 2578.

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Exhibit "1"  
Accusation No. PT-2004-1693 and Declaration of Service

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 MICHAEL A. CACCIOTTI, State Bar No. 129533  
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Los Angeles, CA 90013  
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6

7 Attorneys for Complainant

8  
9 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
**BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. PT-2004-1693

12 TRACY DAWN SIMMONS  
155 Brewer Street, Apt. 32  
13 Templeton, CA 93465

**A C C U S A T I O N**

14 Psychiatric Technician License No. PT 31428

15 Respondent.  
16

17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this  
20 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational  
21 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

22 2. On or about September 11, 2002, the Bureau of Vocational Nursing and  
23 Psychiatric Technicians (Bureau) issued Psychiatric Technician License No. PT 31428 to Tracy  
24 Dawn Simmons (Respondent). The Psychiatric Technician License was in full force and effect at  
25 all times relevant to the charges brought herein. The license expired on March 31, 2008, and has  
26 not been renewed.

27 ///

28 ///

## JURISDICTION

3. This Accusation is brought before Bureau under the authority of the following laws. All section references are to the Business and Professions (Code) unless otherwise indicated.

## STATUTORY PROVISIONS

4. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 4545 of the Code, the Bureau may renew an expired license at any time within four years after the expiration.

5. Section 136(a) of the Code states:

“(a) Each person holding a license, certificate, registration, permit, or other authority to engage in a profession or occupation issued by a board within the department shall notify the issuing board at its principal office of any change in his or her mailing address within 30 days after the change, unless the board has specified by regulations a shorter time period.”

6. Section 477 of the Code states:

“(a) “Board” includes “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

“(b) “License” includes certificate, registration or other means to engage in a business or profession regulated by this code.”

7. Section 490 of the Code provides, in pertinent part, that the Bureau may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of a licensed psychiatric technician.

8. Section 4520 of the Code provides, in pertinent part that the Bureau may discipline any licensed psychiatric technician for any reason provided in Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code § 4500, et. seq.)

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1                   9.       Section 4521 of the Code states:

2                   "The board may suspend or revoke a license issued under this chapter [the  
3       Psychiatric Technicians Law [(Code section 4500, et seq.)] for any of the following reasons:

4                   "(a) Unprofessional conduct, which includes but is not limited to any of the  
5       following:

6                   ....

7                   (4) Obtain or possess in violation of law, or prescribe, or except as directed by a  
8       licensed physician and surgeon, dentist, or podiatrist administer to himself or herself or furnish or  
9       administer to another, any controlled substance as defined in Division 10 (commencing with  
10      Section 11000) of the Health and Safety Code or any dangerous drug as defined in Section 4022.

11                  ....

12                  (6) Be convicted of a criminal offense involving the falsification of records  
13      concerning prescription, possession, or consumption of any of the substances described in  
14      paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the  
15      conviction. The board may inquire into the circumstances surrounding the commission of the  
16      crime in order to fix the degree of discipline."

17                                   **REGULATORY PROVISIONS**

18                  10.       California Code of Regulations, title 16, section 2564, states:

19                  "All persons holding a license from the Board shall file their current mailing  
20      address with the Bureau at its office in Sacramento, and shall immediately notify the Board of  
21      any and all changes of mailing address, within 30 days after the change, giving both their old and  
22      new addresses and license number."

23                  11.       California Code of Regulations, title 16, section 2578, states in pertinent  
24      part:

25                  "For the purposes of denial, suspension, or revocation of a license pursuant to  
26      Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or  
27      act shall be considered to be substantially related to the qualifications, functions or duties of a  
28      licensed psychiatric technician if to a substantial degree it evidences present or potential



1   unfitness of a licensed psychiatric technician to perform the functions authorized by his license in  
2   a manner consistent with the public health, safety, or welfare. . . ."

### 3                                   **COST RECOVERY**

4                   12.     Section 125.3 of the Code provides, in pertinent part, that a Board may  
5   request the administrative law judge to direct a licensee found to have committed a violation or  
6   violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
7   and enforcement of the case.

### 8                                   **FIRST CAUSE FOR DISCIPLINE**

#### 9                                   **(Convictions of Substantially Related Crimes)**

10                  13.     Respondent is subject to disciplinary action under section 4521,  
11   subdivisions (a) and (f), and section 490 of the Code, in conjunction with California Code of  
12   Regulations, title 16, section 2578, in that Respondent was convicted of crimes substantially  
13   related to the qualifications, functions or duties of a licensed psychiatric technician, as follows:

14                  a.     On or about May 5, 2005, Respondent was convicted by the Court on a  
15   plea of nolo contendere for violating one count of Penal Code section 484(a) (theft of property), a  
16   misdemeanor, in the criminal proceeding entitled *The People of the State of California v.*  
17   *Tracy Dawn Simmons* (Super. Ct. San Luis Obispo County, 2005, No. M371937). Respondent  
18   was sentenced to one day in jail, fined \$450.00 and placed on two years probation. The  
19   circumstances surrounding the conviction are that on or about March 29, 2005, a security guard  
20   at Food 4 Less observed Respondent placing merchandise in her pockets. Respondent left the  
21   store without paying for some of the merchandise. Police officers were called and placed  
22   Respondent under arrest. Respondent admitted to the theft.

23                  b.     On or about November 30, 2005, Respondent was convicted by the Court  
24   on a plea of nolo contendere for violating one count of Penal Code section 666 (petty theft), a  
25   misdemeanor, in the criminal proceeding entitled *The People of the State of California v. Tracy*  
26   *Dawn Simmons* (Super. Ct. San Luis Obispo County, 2005, No. M381068). Respondent was  
27   sentenced to 30 days in jail. The circumstances surrounding the conviction are that on or about  
28   November 23, 2005, a security guard at Kohl's observed Respondent remove a pair of boots from



1 the display. She removed her shoes and put on the boots from the display and placed her shoes  
2 into the box. Respondent left the store without paying for the merchandise. Respondent was  
3 escorted back into the store. Police officers were called and placed Respondent under arrest.  
4 Respondent was on probation from her previous Penal Code section 484(a) conviction (described  
5 above) at the time of her arrest.

6 c. On or about June 6, 2007, Respondent was convicted by the Court  
7 on a plea of nolo contendere for violating one count of Health and Safety Code section 11377(a)  
8 (possession of a controlled substance), a misdemeanor, in the criminal proceeding entitled *The*  
9 *People of the State of California v. Tracy Dawn Simmons* (Super. Ct. San Luis Obispo County,  
10 2007, No. M400028). Respondent was sentenced to 60 days in jail and fined \$200.00. The  
11 circumstances surrounding the conviction are that on or about March 12, 2007, officers were  
12 dispatched to a suspicious vehicle parked in front of a high school. Upon arrival, Respondent  
13 gave consent to San Luis Obispo Sheriff's Department officers to search her vehicle. The officers  
14 found a glass crack pipe and a small plastic bag containing a white crystalline substance which  
15 tested positive for Methamphetamine. Respondent was placed under arrest.

16 d. On or about February 1, 2008, Respondent was convicted by the Court  
17 on a plea of nolo contendere for violating one count of Penal Code section 666 (petty theft), a  
18 misdemeanor, in the criminal proceeding entitled *The People of the State of California v. Tracy*  
19 *Dawn Simmons* (Super. Ct. San Luis Obispo County, 2008, No. F413428). The imposition of  
20 sentence was suspended and respondent was placed on probation for 2 years. The circumstances  
21 surrounding the conviction are that on or about January 19, 2008, Respondent was arrested after  
22 a security guard at Rite Aid observed Respondent place merchandise under her purse, and leave  
23 without paying for the merchandise. Respondent was on probation from her previous Penal Code  
24 section 484(a) conviction (described above) at the time of her arrest.

## 25 **SECOND CAUSE FOR DISCIPLINE**

### 26 **(Unlawful Possession of a Controlled Substance)**

27 14. Respondent is subject to disciplinary action under section 4521,  
28 subdivision (a)(4) of the Code, on the grounds of unprofessional conduct, in that on or about

1 June 6, 2007, Respondent was convicted for possession of a controlled substance. Complainant  
2 refers to, and by this reference incorporates, the allegations set forth above in paragraph 13,  
3 subparagraph (c), as though set forth fully.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Failure to Notify the Bureau of an Address Change)**


6 15. Respondent is subject to disciplinary action under section 136, subdivision  
7 (a), and section 4521, subdivision (a) of the Code, in conjunction with California Code of  
8 Regulations, title 16, section 2564, in that Respondent committed acts which constitute  
9 unprofessional conduct, when she failed to notify Bureau of any change in her mailing address  
10 within 30 days after the change, unless the bureau has specified by regulations a shorter time  
11 period.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
14 alleged, and that following the hearing, the Bureau issue a decision:

- 15 1. Revoking or suspending Psychiatric Technician License Number  
16 PT 31428, issued to Respondent;
- 17 2. Ordering Respondent to pay the Bureau the reasonable costs of the  
18 investigation and enforcement of this case, pursuant to Business and Professions Code section  
19 125.3, and
- 20 3. Taking such other and further action as deemed necessary and proper.
- 21

22 DATED: September 5, 2008

23  
24   
TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Bureau of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
Complainant